

STATE OF NEW YORK

STATE TAX COMMISSION

----- :  
In the Matter of Application :  
of :  
CONDEC CORPORATION :  
(SUCCESSOR TO CONSOLIDATED AVIONICS :  
CORPORATION) :  
for revision of franchise tax under :  
Article 9-A of the tax law for the fiscal :  
year ended 7/31/63. :  
----- :

Consolidated Avionics Corporation having filed an application for revision of franchise tax under Article 9-A of the tax law for the FYE 7/31/63, and a hearing having been held at the office of the State Tax Commission, State Campus, Albany, N.Y., at which hearing E. V. Egert, Esq. of counsel, and P. R. Kahan, director of state and local taxes, appeared and testified and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Consolidated Avionics Corporation was incorporated in New York on January 19, 1955 and was liquidated into its parent, Condec Corporation, on November 30, 1964, in a transaction subject to the provisions of Section 332 of the Internal Revenue Code.

(2) Consolidated Avionics Corporation filed a return for the FYE 7/31/63 claiming a net operating loss deduction of \$177,914 based on carryforward of a net operating loss sustained in the FYE 7/31/62. The Corporation Tax Bureau disallowed the net operating loss deduction and issued a notice of assessment dated August 7, 1964 computed as follows:

Consolidated Avionics Corporation - FYE 7/31/63

Federal taxable income	\$172,901.00
Plus N. Y. franchise tax deducted	25.00
Adjusted entire net income	172,926.00
Tax at 5½%	9,510.93
Tax reported	530.38
Added tax due	8,980.55

A net operating loss rider attached to the return indicated that Federal net operating losses as follows were being carried forward to offset the Federal taxable income of \$172,901.00 for the FYE 7/31/63:

FYE 7/31/59 - Unused portion of loss	(40,281)
FYE 7/31/60 Loss	(143,792)
FYE 7/31/61 Loss	(40,257)
FYE 7/31/62 Loss	(177,939)
Net operating loss rider per federal return	(402,269)

Sec. 208.9(f) of the tax law provides that:

"A net operating loss deduction shall be allowed which shall be presumably the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code of nineteen hundred fifty-four, . . . except that . . . , (2) such deduction shall not include any net operating loss sustained during any taxable year beginning prior to January first, nineteen hundred sixty-one, . . ."

(3) Subsequent Internal Revenue Service audits resulted in revised Federal taxable income and State entire net income as follows:

<u>FYE</u>	<u>Federal Taxable Income</u>	<u>State Entire Net Income</u>
7/31/62	(188,476)	(188,451)
7/31/63	161,597	161,622

The foregoing Federal change for the FYE 7/31/63 results in a revised assessment computed as follows:

Consolidated Avionics Corporation - FYE 7/31/63

Revised entire net income	\$161,622.00
Tax at 5½%	8,889.21
Tax reported	530.38
Revised added tax due	8,358.83

(4) The franchise tax return filed by Condec Corporation for the FYE 7/31/65 claimed a net operating loss deduction of \$43,957, pursuant to Sec. 332 of the Internal Revenue Code, based on carryforward of net operating losses of its liquidated subsidiary, Consolidated Avionics Corporation, of which \$3,820 was carried forward from the FYE 7/31/62.

The State Tax Commission hereby

DETERMINES:

(A) Since net operating losses must be used in chronological order, the net operating loss deduction allowed for the FYE 7/31/63, under Section 172 of the Internal Revenue Code, was \$161,597, which is the amount required to reduce Federal taxable income to zero. This amount was made up of \$40,281 unused portion of loss sustained in FYE 7/31/59, plus \$121,316 of the loss sustained in FYE 7/31/60. Under the provisions of clause 2 of Section 208.9(f) of the tax law, the net operating losses for taxable years beginning prior to January 1, 1961 are required to be excluded in computing the net operating loss deduction allowed for state purposes. Accordingly, Consolidated Avionics Corporation is not entitled to a net operating loss deduction for the FYE 7/31/63 and the revised added tax of \$8,358.83 as indicated at (3) is affirmed together with modified statutory charge of 6% per annum from the due date of October 15, 1963.

(B) Condec Corporation is entitled to carry forward to the FYE 7/31/65, pursuant to Section 332 of the Internal Revenue Code, the entire net operating loss of Consolidated Avionics Corporation sustained in the FYE 7/31/62, resulting in a credit computed as follows:

Condec Corporation - FYE 7/31/65

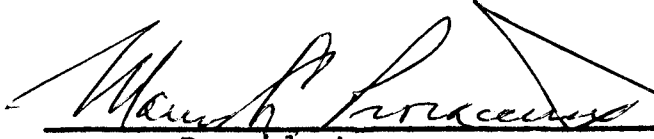
Entire net income reported	621,253.00
Less: balance of net operating loss of Consolidated Avionics Corporation for FYE 7/31/62 (\$188,451 less \$3,820)	184,631.00
Adjusted entire net income	436,622.00
Business allocation % per return	26.43552%
Allocated entire net income	115,423.00
Tax at 5½%	6,348.27
Tax reported	9,032.71
Credit	2,684.44

(C) The above credit of \$2,684.44, plus interest at the rate of 6% per annum from the due date of October 15, 1965, is to be applied as a partial offset against the revised added tax for the FYE 7/31/63 of \$8,358.83, plus modified statutory charge, as affirmed at (A) above.

Dated: Albany, New York

this 6th day of September, 1974.

STATE TAX COMMISSION

  
President

  
Commissioner

  
Commissioner